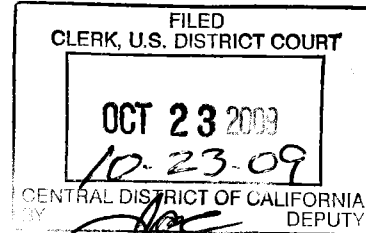


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ORANGE COUNTY COASTKEEPER

JS-6



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ORANGE COUNTY COASTKEEPER  
a non-profit corporation,

Plaintiff,

v.

VI-CAL METALS, INC., a corporation,  
Defendants.

Case No. SACV 08-0739 DDP  
(RNBx)

~~[Proposed]~~  
CONSENT DECREE

(Federal Water Pollution Control  
Act, 33 U.S.C. § 1251 et seq.)

7

1       **WHEREAS**, Orange County Coastkeeper (“Coastkeeper” or “Plaintiff”) is a  
2 non-profit corporation dedicated to the preservation, protection, and defense of the  
3 environment, the wildlife, and the natural resources of Orange County area receiving  
4 waters;

5       **WHEREAS**, Vi-Cal Metals, Inc. (“Defendant” or “Vi-Cal Metals”) operates  
6 two scrap metal recycling facilities located at: (1) 1645 N. Case Street, Orange,  
7 California (hereinafter “Vi-Cal Orange Facility”); and (2) 1400 North Baxter Street,  
8 Anaheim California (“Vi-Cal Anaheim Facility”)(collectively “Vi-Cal Metals  
9 Facilities” or “Facilities” or “Sites”).

10       **WHEREAS**, Coastkeeper contends that Defendant’s operations at the Vi-Cal  
11 Orange Facility results in discharges of pollutants into area storm drains, the Collins  
12 Flood Control Channel, the Santa Ana River, and ultimately the Pacific Ocean  
13 (collectively “Vi-Cal Orange Receiving Waters”); and that Defendant’s operations at  
14 the Vi-Cal Anaheim Facility result in discharges of pollutants into area storm drains,  
15 Carbon Creek Channel, Coyote Creek, the San Gabriel River, and ultimately the  
16 Pacific Ocean (collectively referred to as the “Vi-Cal Anaheim Receiving Waters”);  
17 and further contends that Defendant’s discharges from both of the Facilities are  
18 regulated by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*  
19 (“Clean Water Act”, “CWA” or “Act”), Sections 301(a) and 402, 33 U.S.C §§  
20 1311(a), 1342;

21       **WHEREAS**, on May 10, 2007, Coastkeeper served Defendant, the United  
22 States Environmental Protection Agency (“EPA”), EPA Region IX, the State Water  
23 Resources Control Board (“State Board”) and the Regional Water Quality Control  
24 Board (“Regional Board”), with a notice of intent to file suit (“60-Day Notice”)  
25 under Sections 505(a) and (b) of the CWA, 33 U.S.C. § 1365(a) and (b) for  
26 violations at Defendant’s Vi-Cal Orange Facility. The 60-Day Notice alleged that  
27 the recipients had in the past and continue to violate Sections 301(a) and 402 of the  
28 Act, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants into the Vi-Cal

1 Orange Receiving Waters in violation of National Pollution Discharge Elimination  
2 System ("NPDES") General Permit No. CAS0000001 [State Board] Water Quality  
3 Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Permit")  
4 and the Act;

5 **WHEREAS**, on July 24, 2007, Coastkeeper filed a complaint against  
6 Defendant in the United States District Court, Central District of California (Civil  
7 Case No. SACV 07-0853 DDP (FMOx)) entitled *Orange County Coastkeeper v. Vi-*  
8 *Cal Metals, Inc.* ("Vi-Cal Orange Action");

9 **WHEREAS**, on April 24, 2008, Coastkeeper served Defendant, the United  
10 States Environmental Protection Agency ("EPA"), EPA Region IX, the State Water  
11 Resources Control Board ("State Board") and the Regional Water Quality Control  
12 Board ("Regional Board"), with a notice of intent to file suit ("60-Day Notice")  
13 under Sections 505(a) and (b) of the CWA, 33 U.S.C. § 1365(a) and (b) for  
14 violations at Defendant's Vi-Cal Anaheim Facility. The 60-Day Notice alleged that  
15 the recipient had in the past and continues to violate Sections 301(a) and 402 of the  
16 Act, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants into the Vi-Cal  
17 Anaheim Receiving Waters in violation of the Industrial Permit and the Act.

18 **WHEREAS**, on July 3, 2008, Coastkeeper filed a complaint against  
19 Defendant in the United States District Court, Central District of California (Civil  
20 Case No. SACV 08-0739 DDP (RNBx)) entitled *Orange County Coastkeeper v. Vi-*  
21 *Cal Metals, Inc.* ("Vi-Cal Anaheim Action");

22 **WHEREAS**, Defendant denies all allegations of the complaints filed in SACV  
23 07-0853 DDP (FMOx) and in SACV 08-0739 DDP (RNBx)(collectively  
24 "Complaints");

25 **WHEREAS**, Coastkeeper and Defendant (collectively referred to herein as the  
26 "Settling Parties" or "Parties") have agreed that it is in the Parties' mutual interest to  
27 enter into a Consent Decree setting forth terms and conditions appropriate to  
28 resolving the allegations set forth in the Complaints without further proceedings;

1       **WHEREAS**, the Parties further agree that it is appropriate to enter into  
2 complementary Consent Decrees in the Vi-Cal Orange Action and in the Vi-Cal  
3 Anaheim Action;

4       **WHEREAS**, Defendant intends to continue industrial activities at the Vi-Cal  
5 Metals Facilities and will therefore need to undertake additional measures to control  
6 storm water pollution associated with continuing industrial activities;

7       **WHEREAS**, this Consent Decree shall be submitted to the United States  
8 Department of Justice and EPA for the statutory review period pursuant to 33 U.S.C.  
9 § 1365(c) and 40 C.F.R. § 135.5;

10       **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree  
11 shall be made in compliance with all applicable Federal and State laws and local  
12 rules and regulations;

13       **WHEREAS**, the Parties recognize that this Consent Decree calls for the  
14 implementation of structural Best Management Practices ("BMPs") and other  
15 methods of reduction of potential total mass emission of contaminants by methods  
16 the results of which are not entirely certain and acknowledge that achievement of the  
17 numeric limits called for by this Consent Decree may not be immediately achievable;

18       **AND WHEREAS**, the Parties recognize that Defendant's agreement to install  
19 sand filtration devices at the Facilities' storm water discharge points constitutes the  
20 initial phase of an iterative compliance process, and that additional means of  
21 reducing potential total mass emissions of contaminants may be necessary to meet  
22 Defendant's obligation to achieve the numeric limits called for herein on or before  
23 July 15, 2012;

24       **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
25 **SETTLING PARTIES AS FOLLOWS:**

26       1.     The Court has jurisdiction over the subject matter of this action pursuant  
27 to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A);  
28



1           2.     Venue is appropriate in the Central District Court pursuant to Section  
2 505(c)(1) of the Act, 33 U.S.C. §1365(c)(1), because the Vi-Cal Facilities at which  
3 the alleged violations took place are located within this District;

4           3.     The Complaints state a claim upon which relief may be granted against  
5 Defendant pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

6           4.     Coastkeeper has standing to bring this action.

7 **I.    CONSENT DECREE OBJECTIVES**

8           5.     It is the express purpose of the Parties entering into this Consent Decree  
9 to further the objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. §  
10 1251 *et seq.*, and to resolve those issues alleged by Coastkeeper in its Complaints. In  
11 light of these objectives and as set forth fully below, Defendant agrees to comply  
12 with the provisions of this Consent Decree and to comply with the requirements of  
13 the Industrial Permit and all applicable provisions of the CWA at the Vi-Cal Metals  
14 Facilities. Specifically, Receiving Water Limitation C(2) in the Industrial Permit  
15 requires that the Vi-Cal Facilities “not cause or contribute to the exceedence of an  
16 applicable water quality standards.” Effluent Limitation B(3) of the Industrial Permit  
17 requires that Best Management Practices (“BMPs”) be developed and implemented  
18 to achieve Best Available Technology (“BAT”) and the Best Conventional Pollutant  
19 Control Technology (“BCT”). Defendant is required to develop and implement  
20 BMPs necessary to comply with the Industrial Permit’s requirement to achieve  
21 compliance with BAT/BCT standards and with Water Quality Standards.<sup>1</sup>

22 **II.   COMMITMENTS OF THE PARTIES**

23 **A.   Industrial Storm Water Pollution Control Measures**

24  
25 \_\_\_\_\_  
26 <sup>1</sup> Water Quality Standards means water quality criteria contained in the Regional Water Quality  
27 Control Plan, Los Angeles Region (“Basin Plan”), the California Ocean Plan, the National Toxics  
28 Rule, the California Toxics Rule, and other state or federally approved surface water quality plans.

1           6.     Compliance Storm Event. The Parties agree that the Compliance Storm  
2 for the Vi-Cal Metals Facilities is a 5 year, 24 hour return period rain event  
3 (“Compliance Storm Event”), as defined by the National Oceanographic and  
4 Atmospheric Administration (“NOAA”) Atlas 2, Vol. XI, Figure 39 (1973) with an  
5 assumed dry antecedent condition and 3.4 total inches of rainfall over a 24-hour  
6 period. The Parties agree that any discharge of stormwater and/or stormwater  
7 pollutants from the Vi-Cal Metals Facilities in connection with a rainfall event that  
8 exceeds a Compliance Storm Event is not a violation of this Consent Decree.

9           7.     BMP Plan. By the Effective Date of this Consent Decree, or by August  
10 21, 2009, whichever is earlier, Vi-Cal Metals will prepare a plan to capture,  
11 infiltrate, evaporate, harvest, treat, and/or store to prevent off-site discharge of  
12 industrial stormwater generated during rain events up to and including the  
13 Compliance Storm Event at the Vi-Cal Metals Facilities (“BMP Plan”). Unless all  
14 water is infiltrated, evaporated, or harvested, the BMPs set forth in the BMP Plan  
15 shall include sand filtration, as described below, and may also include other  
16 treatment devices that are as effective or more effective than sand filtration.  
17 Defendant shall continue to implement the BMP Plan for the life of this Consent  
18 Decree. The BMP Plan described in this paragraph may contain the following  
19 measures listed in (a)-(k) of this paragraph, as appropriate, and Defendant shall  
20 develop and implement additional measures, if necessary, to reduce contaminants in  
21 storm water discharges to levels below the numeric limits set forth in Paragraph  
22 12 of this Consent Decree:

23               (a)   Materials Storage and Industrial Activities. Placing sources of  
24 contamination in covered containers or under cover with such areas contained by  
25 berming or other containment sufficient to prevent the exposure of pollutants to  
26 storm water or rainwater and the runoff or discharge of pollutants;

27               (b)   Coating. Coating structural sources of contamination (e.g.  
28 galvanized building roofs and siding);



1 (c) Sweeping. Employing high efficiency sweeping in order to  
2 prevent the discharge of pollutants;

3 (d) Storing, Harvesting for Reuse, and/or Infiltrating Runoff.  
4 Constructing and maintaining on-site retention Facility (such as retention ponds or  
5 swales, infiltration basins, baker tanks, sumps, cisterns, or dry wells/ injection wells)  
6 designed to hold and store the runoff generated by a 5-year, 24 hour return period  
7 storm event without any off-site discharge;

8 (e) Infiltrating Runoff. Creating a pervious site such that infiltration  
9 occurs passively through the Sites;

10 (f) Infiltration Structure. Collecting and routing storm water to a  
11 structure that is designed to be an infiltration structure (such as an infiltration basin  
12 or dry well/ injection well);

13 (g) Treating Runoff. Treating runoff discharging from the Sites.

14 (h) Sand Filters. The BMP Plan may include the installation of the  
15 sand filters evaluated in the Caltrans Retrofit Study ("CRS") or equivalent treatment  
16 devices at appropriate locations.

17 (i) Routing Discharge to the Publicly Owned Treatment Works.  
18 Routing discharge to the publicly owned treatment works ("POTW")/ sanitary  
19 sewers, in combination with on-site retention such that flows are discharged off-peak  
20 in the POTW so as not to risk exacerbating wet weather Sanitary Sewer Overflow  
21 risks from the POTW.

22 (j) Vehicle and Equipment Maintenance and Fueling.

23 i. Conducting all vehicle and equipment maintenance and  
24 fueling at the Vi Cal Metals Facilities on asphalt or another impermeable surface;

25 ii. Conducting all vehicle and equipment maintenance and  
26 fueling at the Vi Cal Metals Facilities under cover;

27 iii. Berming or otherwise containing the surface of the area  
28 where vehicle maintenance and fueling occurs (hereinafter "Maintenance and





1 Fueling Area") in order to prevent the exposure of pollutants to storm water or  
2 rainwater and the runoff or discharge of pollutants;

3                   iv.     Cleaning the Maintenance and Fueling Area as necessary to  
4 control track-off of pollutants;

5                   v.     Dispensing all petroleum products within the Maintenance  
6 and Fueling Area(s);

7                   vi.    Installing tire washing Facility at exit points from the Vi-  
8 Cal Metals Facilities to prevent off-site tracking from vehicles;

9                   vii.   Annually power washing the entire paved part of the Vi-  
10 Cal Metals Facilities, including areas not reachable by mechanical sweepers, and  
11 dispose of the contaminated water consistent with all federal, state and local  
12 requirements, and not to area storm drains.

13               (k)     While Defendant may employ some of the methods listed above  
14 to achieve compliance with Numeric Limits by the end of the Consent Decree period,  
15 it agrees to install sand filtering systems at the Vi-Cal Metals Facilities as described  
16 in subsection (h) above prior to the beginning of the 2009-2010 wet season and to re-  
17 coat all galvanized building roofs and siding, if any, at such Facilities by the end of  
18 the 2010 calendar year if two or more samples from the 2009-2010 wet season reveal  
19 exceedances of the Numeric Limit for zinc set forth in Table 1 below.

20               8.     Defendant shall provide the completed BMP Plan to Coastkeeper for  
21 review and comment no later than the Effective Date of this Consent Decree, or  
22 August 21, 2009, whichever is earlier. Defendant shall also provide a separate  
23 document justifying the BMP selections. Coastkeeper shall respond with  
24 comments within 20 days of receiving the Plan and statement justifying the BMP  
25 selections in the Plan. Defendant shall incorporate Plaintiff's comments into the  
26 Plan, or shall justify in writing why any comment is not being incorporated, within  
27 14 days of receiving comments. Defendant shall implement the Plan by October 1,  
28 2009.





1           9. As described in Section B below, beginning with the 2009-2010 wet  
2 season, and for each year thereafter during the term of this Consent Decree,  
3 stormwater discharges from any storm water discharge point or outfall located at  
4 the Vi-Cal Metals Facilities occurring during rain events less than the Compliance  
5 Storm Event shall be considered a breach of this Consent Decree if: (a) the  
6 pollutant concentrations in such discharge exceed the numeric limits set forth in  
7 paragraph 12 below; (b) the corresponding potential mass emission reductions  
8 described in paragraphs 13 through 15 below are not achieved; and (c) the  
9 conditions of paragraph 16 below are not met. Non-stormwater discharges from  
10 the Containment Area not authorized by the Industrial Permit shall also be  
11 considered a breach of this Consent Decree, subject to the Force Majeure  
12 provisions set forth in Paragraph 36 below. Permitted Discharges to the  
13 POTW/sanitary sewer, if any, shall not be considered a discharge from the  
14 Containment Area, and shall not be considered a breach of this Consent Decree.

15           **B. NUMERIC LIMITS AND SAMPLING**

16           10. Sampling Program. By the Effective Date, or by August 21, 2009,  
17 whichever is earlier, Defendant shall develop a plan for the collection of storm  
18 water samples during storm events that incorporates the requirements of this  
19 Consent Decree and the Industrial Permit, including, but not limited to, the  
20 requirement to sample non-storm water discharges for the Vi Cal Metals Facilities  
21 ("Sampling Plan"), and which specifically shall require sampling at all discharge  
22 points from the Vi Cal Metals Facilities as described below, and all other new or  
23 additional discharge points created in the future. Additionally, Defendant shall take  
24 effluent discharge samples from each discharge point for each sand filter installed  
25 pursuant to the requirements of this Consent Decree and the BMP Plan. Defendant  
26 agrees to submit the Sampling Plan to Coastkeeper for review and comment as  
27 soon as it is completed, but in any event no later than the Effective Date of this  
28 Consent Decree, or by August 21, 2009, whichever is earlier. Coastkeeper shall



1 provide comments, if any, to the Defendant within 20 days of receipt of the  
2 Sampling Plan. Any disputes as to the adequacy of the Sampling Plan shall be  
3 resolved pursuant to the dispute resolution provisions of this Consent Decree, set  
4 out at paragraphs 28 through 31 below.

5 11. Sample Analysis and Sample Frequency. In the 2009/2010 wet season  
6 (defined as October 1- May 31), and continuing each wet season for the life of this  
7 Consent Decree, Defendant shall collect storm water samples from every storm  
8 event causing a discharge at the Vi-Cal Metals Facilities occurring from 7:00 a.m.  
9 to 6:00 p.m. Monday through Friday, not including holidays when the Vi-Cal  
10 Metals Facilities are not operating, and from each discharge location at the Vi-Cal  
11 Metals Facilities where such discharge occurs, until a minimum of four such events  
12 per wet season have been sampled. Defendant shall analyze the samples for the  
13 constituents identified in Table 1. Defendant may discontinue analyzing storm  
14 water samples at any discharge point for a constituent specified in Table 1 after  
15 four consecutive sampling results for the constituent at that discharge point are  
16 reported as below the Detection Limit for the analyses. A California State certified  
17 laboratory shall perform all sample chemical analyses. Defendant shall select  
18 laboratories and analytical limits such that, at a minimum, the method detection  
19 limits ("MDLs") shall be below CTR Levels set forth in Table 1 (based on dissolved  
20 concentrations). In addition, Defendant shall perform sampling in the manner  
21 required by the Industrial Permit at the Vi-Cal Metals Facilities.

22 12. Numeric Limits and Contaminant Reduction. During the 2009-2010  
23 wet season, Defendant shall achieve compliance with this Consent Decree by  
24 preparing the BMP Plan and monitoring plan required under this Consent Decree.  
25 However, on or before July 15, 2012, Defendant shall achieve compliance by  
26 showing that the concentrations of the contaminants listed in Table 1 that are  
27  
28



discharged from the Sites are below the California Toxics Rule ("CTR") CMC<sup>2</sup> limits and additional numeric limits (collectively "Numeric Limits") set forth in Table 1 below.

**Table 1. Numeric Limits**

Contaminant	Numeric Limit <sup>3</sup>
Total suspended solids	100 mg/L
Copper	0.013 mg/L*
Lead	0.065 mg/L*
Zinc	0.120 mg/L*
Oil and grease	15 mg/L
Aluminum	0.750 mg/L
Arsenic	0.340 mg/L*
Cadmium	0.0043 mg/L*
Iron	1.0 mg/L
Mercury	0.0024 mg/L
Nickel	0.470 mg/L*
Silver	0.0034 mg/L*
Chemical oxygen demand	120 mg/L
pH	6.0-9.0
Chromium (III)	0.550 mg/L*
Chromium (VI)	0.016 mg/L*

13. Exceedances of Numeric Limits. If any sampling demonstrates discharges of stormwater containing a concentration of pollutants exceeding

<sup>2</sup> The CTR CMC limits are the California Toxics Rule (CTR) Criterion Maximum Concentrations (CMC) from the Federal Register, Vol. 65, No. 97, May 18, 2000. Values differ for freshwater and saltwater discharges. Defendant shall use the value applying in the first Water of the State receiving its discharge. For metals the limits apply to the dissolved quantity, and hence defendant shall measure dissolved as well as total recoverable metals. In general, freshwater limits for metals depend on water hardness. Defendant shall measure the hardness in each discharge sample and use the resulting value as specified by the Federal Register to determine the specific CMC limits.

<sup>3</sup> Note: An \* next to a numeric limit denotes a CTR Limit. CTR Limits are expressed as a function of total hardness in the water body based on the equations provided in Federal Register, Vol. 65, No. 97, May 18, 2000, and being hardness dependant will vary with the analyzed total hardness of the water body. The CTR Criterion Maximum levels expressed herein assume a total hardness of 100 mg/L.

1 Numeric Limits, as expressed immediately above, Defendant shall demonstrate  
2 within 180 days that the potential total mass emission of the contaminant has been  
3 reduced through a combination of decreases in its concentration and reductions of the  
4 volume of the runoff discharged from industrial areas of the Vi-Cal Metals Facilities.  
5 Defendant agrees to submit a plan for additional contaminant reduction to  
6 Coastkeeper for review and comment as soon as practicable but in any event no later  
7 than 30 days after receipt of sampling data demonstrating an exceedance.  
8 Coastkeeper shall provide comments, if any, to the Defendant within 30 days of  
9 receipt. Defendant shall incorporate Coastkeeper's comments in order to reduce the  
10 mass emission of the contaminant and implement the reduction within 30 days of  
11 receiving Coastkeeper's comments for completion within 60 days of receipt. If any  
12 of Coastkeeper's comments are not utilized, Defendant shall justify in writing why  
13 any comment is not being incorporated within 30 days of receiving comments. Any  
14 disputes as to the adequacy of the mass emission reduction plan shall be resolved  
15 pursuant to the dispute resolution provisions of this Consent Decree, set out at  
16 Paragraphs 28 through 31 below. The baseline for mass emissions reductions  
17 calculations at the Vi-Cal Anaheim Facility, consisting of the geometric mean of all  
18 concentrations of stormwater contaminants sampled by Coastkeeper at the Vi-Cal  
19 Anaheim Facility and sampled by Defendant at such Facility prior to the Effective  
20 Date, is as follows:

21 **Table 2. Geometric Mean of Contaminants That Exceed Numeric Limits**

Contaminant	Geometric Mean
Copper	0.1424 mg/L
Oil and Grease	29.9450 mg/L
Zinc	1.2155 mg/L
Aluminum	4.9710 mg/L
Total Suspended Solids	171.8175mg/L
Chemical Oxygen Demand	209.5926 mg/L
Iron	6.4929 mg/L
Cadmium	0.0427 mg/L

14. For the contaminants set forth in Table 2 above, the demonstration that the potential total mass emission of a contaminant has been reduced shall be made as follows:

a. Determine the site surface area discharging runoff containing the contaminant before and after this Effective Date;

b. Multiply the geometric mean of concentrations and site surface area discharging before and after this Effective Date to obtain indicators of potential mass emission before and after this Effective Date; and

c. Show that the potential mass emission of the contaminant has decreased by the following amount:

If the concentration exceeds the CTR Limit by:	Then the potential total mass emission shall be reduced by:
1-100% (i.e., up to 2 times the limit)	50%
101-200% (i.e., up to 3 times the limit)	75%
201-300% (i.e., up to 4 times the limit)	95%

15. For the pollutants listed in Table 3 below, for which inadequate baseline data is currently available for inclusion in Table 2 above, or for which the geometric means are below the Numeric Limits set forth in Table 1, the following method set out in a. through d. below shall be used to assess compliance with the Numeric Limits described in Table 1 above for any discharge point where storm water discharges occur during storm events smaller than the Compliance Storm Event.

**Table 3.**

Contaminant	Geometric Mean <sup>4</sup>
Mercury	Insufficient Data
Lead	0.0544 mg/L
Chromium (III)	Insufficient Data
Chromium (VI)	Insufficient Data

<sup>4</sup> The references in Table 3 above to "Insufficient Data" indicate that the combined storm water discharge sampling data currently available to Coastkeeper lack at least three sample results that are above the reporting limit for that contaminant from which to calculate the geometric mean.



Arsenic	0.0106 mg/L
Nickel	0.1223 mg/L
Silver	0.0098 mg/L

a. Based on existing site conditions (100 percent impervious surfaces and no storm water infiltration or diversion) and the amount of rainfall that falls on the Facility during each of the monitored storm events described, the volume of water that would have discharged from the Facility prior to installation of the filtration and/or diversion measures shall be calculated.

b. Using the Numeric Limits described above, the mass of "allowable" pollutants will be calculated (volume of water assuming no filtration/diversion multiplied by the Numeric Limits) for each listed constituent.

c. The actual contaminant mass discharged for each of the pollutants listed above will be calculated (volume of water actually discharged multiplied by the analytical results for storm events where discharges occur);

d. For each of the monitored storm events, the calculated mass of actual contaminants discharged under subparagraph (c) above will be compared to the mass of allowable contaminants calculated under subparagraph (b) above.

16. Numeric Limits and Breach. If any sample taken during the duration of this Consent Decree reveals an exceedence of an applicable Numeric Limit without the corresponding subsequent demonstration of significant reduction in mass emissions, Defendant shall be in breach of this Consent Decree. However, the Parties agree that Coastkeeper will not enforce any breach of this Consent Decree for failure to meet applicable numeric limits and failure to demonstrate significant reduction of mass emissions of contaminants until the conclusion of this Consent Decree, provided that Defendant makes consistent progress towards achievement of the numeric limits during the duration of this Consent Decree. If Coastkeeper is dissatisfied with Defendant's progress towards achievement of the numeric limits set by this Consent Decree, Coastkeeper may elect to invoke the dispute resolution



1 procedures outlined in paragraphs 28-31 below.

2 **C. STORM WATER POLLUTION PREVENTION PLAN**

3 17. SWPPP Revisions. By the Effective Date of this Consent Decree,  
4 Defendant agrees to revise the Storm Water Pollution Prevention Plans ("SWPPPs")  
5 currently in effect at each of the Vi-Cal Metals Facilities to incorporate all storm  
6 water pollution prevention measures and other requirements set forth in this Consent  
7 Decree and/or the Industrial Permit. Specifically, the SWPPPs shall include a  
8 description of all industrial activities and corresponding potential pollution sources  
9 and, for each potential pollutant source, a description of the potential pollutants from  
10 the sources. The SWPPPs shall also identify BMPs (and their implementation dates)  
11 designed to achieve compliance with the Numeric Limits set forth in Table 1, the  
12 mass emissions potential reduction measures, and CTR Levels. Defendant shall  
13 revise the SWPPPs as necessary to incorporate additional BMPs developed pursuant  
14 to this Consent Decree.

15 18. Coastkeeper's Review of Revised SWPPPs. Defendant shall submit one  
16 copy of each of the revised SWPPPs to Coastkeeper within seven (7) days of  
17 completion of the revisions.

18 a. Within twenty (20) days of Coastkeeper's receipt of the  
19 revised SWPPPs, Coastkeeper shall provide Defendant with comments and  
20 suggestions, if any, concerning the revisions to the SWPPPs.

21 b. Within fourteen (14) days of Defendant's receipt of  
22 Coastkeeper's comments on the revised SWPPPs, Defendant shall incorporate  
23 Coastkeeper's comments and re-issue the SWPPPs.

24 c. If Coastkeeper is dissatisfied with the SWPPPs after their  
25 reissuance pursuant to paragraph 18(b) above, Coastkeeper may, within sixty (60)  
26 days of Coastkeeper's receipt of the SWPPP, elect to invoke the dispute resolution  
27 procedures outlined in paragraphs 28 through 31 below.

1 **D. MONITORING AND REPORTING**

2 19. Site Inspections. For the first two years of the term of this Consent  
3 Decree, Coastkeeper's Water Quality Engineer, accompanied by Coastkeeper's  
4 attorney or other representative, may conduct up to three yearly Site Inspections at  
5 the Vi-Cal Metals Facilities and may conduct up to two Site Inspections each year  
6 thereafter. The Site Inspections shall occur during normal business hours and  
7 Coastkeeper shall provide Defendant with forty-eight (48) hours notice prior to each  
8 inspection. During the Site Inspections, Coastkeeper and/or its representatives shall  
9 be allowed access to the Vi-Cal Metals Facilities' SWPPPs and monitoring records  
10 and to all monitoring reports and data for the Vi-Cal Facilities. During the Site  
11 Inspections, Coastkeeper and/or its representatives may collect samples of storm  
12 water discharges at the Vi-Cal Metals Facilities. A certified California laboratory  
13 shall analyze storm water samples collected by Coastkeeper. Coastkeeper shall make  
14 all reasonable efforts to ensure that its inspections are scheduled in such a manner as  
15 to allow Defendant's compliance officer to be present at all inspections.

16 20. Compliance Monitoring and Oversight. Defendant agrees to help defray  
17 Coastkeeper's reasonable anticipated costs incurred in conducting Site Inspections  
18 and in other compliance monitoring and oversight by reimbursing Coastkeeper Five  
19 Thousand Dollars (\$5,000) on or before August 15, 2009. Defendant agrees to make  
20 compliance monitoring and oversight funds payable to "Lawyers for Clean Water  
21 Attorney Client Trust Account" and delivered by certified mail or overnight delivery  
22 to Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California  
23 94129 attention Layne Friedrich. Coastkeeper shall provide copies of any invoicing  
24 for Site Inspections and compliance oversight within 30-days of receiving a written  
25 request by Defendant. Any compliance monitoring money remaining when this  
26 Consent Decree terminates shall be refunded to Defendant.

27 21. Reporting. During the life of this Consent Decree, on a monthly basis,  
28 Defendant shall provide Coastkeeper with a copy of all compliance and monitoring



1 data, including inspection reports, related to the Vi-Cal Metals Facilities. During the  
2 life of this Consent Decree, Defendant shall provide Coastkeeper with all laboratory  
3 analyses related to the Vi-Cal Metals Facilities within seven (7) days of Defendant's  
4 receipt of such information.

5 22. Document Provision. During the life of this Consent Decree, Defendant  
6 shall copy Coastkeeper on all documents related to water quality at the Vi-Cal Metals  
7 Facilities that are submitted to the Regional Board, the State Board, and/or any State  
8 or local agency or municipality. Such reports and documents shall be provided to  
9 Coastkeeper concurrently as they are sent to the agencies and/or municipalities.

10 E. ENVIRONMENTAL PROJECTS AND FEES.

11 23. Environmental Mitigation Project. Defendant agrees to pay Thirty Two  
12 Thousand Five-Hundred Dollars (\$32,500.00) to the O.C./I.E. Public Interest Green  
13 Fund for use in a supplemental environmental project ("SEP") to eliminate or  
14 mitigate the impacts of storm water pollution to California watersheds receiving  
15 discharges from the Vi-Cal Metals Facilities. Defendants shall make the mitigation  
16 payment on or before March 15, 2010 and mail the payment via certified mail or  
17 overnight delivery to the O.C./I.E. Public Interest Green Fund. Defendant shall  
18 provide Coastkeeper with a copy of such payment.

19 24. Coastkeeper's Fees and Costs. Defendant agrees to reimburse  
20 Coastkeeper for Coastkeeper's investigation fees and costs, expert fees and costs,  
21 reasonable attorneys' fees, and other costs incurred as a result of investigating and  
22 preparing the lawsuit, and negotiating a resolution of this matter, totaling Sixty-Six  
23 Thousand Five-Hundred (\$66,500.00) Dollars. Such payment shall be made on or  
24 before August 15, 2009, payable to "Lawyers for Clean Water Attorney Client Trust  
25 Account" and delivered by certified mail or overnight delivery to: Lawyers for Clean  
26 Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129 attention Layne  
27 Friedrich.



1           **F.     STIPULATED PAYMENT**

2           25. Defendant shall make a remediation payment of One Thousand Dollars  
3 (\$1,000.00) for each missed deadline included in or contemplated by this Consent  
4 Decree, unless the missed deadline results from a Force Majeure Event as set forth in  
5 paragraph 36 below. Payments for missed deadline shall be made to the O.C./I.E.  
6 Public Interest Green Fund for the restoration and/or improvement of the watershed  
7 in the area affected by the missed deadline. Defendant agrees to make the stipulated  
8 payment within 30 days of a missed deadline and mail via certified mail or overnight  
9 delivery to the O.C./I.E. Public Interest Green Fund. Defendant shall provide  
10 Coastkeeper with a copy of each such payment.

11           **G.     COMMITMENTS OF PLAINTIFF**

12           26. Stipulated Dismissal. Within ten (10) days of the execution of this  
13 Consent Decree by the Parties, Coastkeeper shall file this [proposed] Consent Decree  
14 with the United States District Court for the Central District of California.

15           27. Review by Federal Agencies. Plaintiff shall submit this Consent  
16 Decree to EPA and the United States Department of Justice ("DOJ") within three  
17 days of the execution of this Consent Decree for the 45-day review consistent with  
18 40 C.F.R. § 135.5. In the event that EPA or DOJ comments negatively on the  
19 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to  
20 resolve the issue(s) raised by EPA or DOJ.

21           **H.     DISPUTE RESOLUTION**

22           28. This Court shall retain jurisdiction over this matter for the purposes of  
23 implementing and enforcing the terms and conditions of this Consent Decree, and  
24 adjudicating all disputes among the parties that may arise under the provisions of this  
25 Consent Decree. The Court shall have the power to enforce this Consent Decree  
26 with all available legal and equitable remedies, including contempt.

27           29. Meet and Confer. A party to this Consent Decree shall invoke the  
28 dispute resolution procedures of this Section by notifying all other Parties in writing



1 of the matter(s) in dispute and of the party's intention to resolve the dispute under  
2 this Section. The Parties shall then meet and confer in an attempt to resolve the  
3 dispute informally over a period of 14 calendar days from the date of the notice.

4 30. If the Parties cannot resolve a dispute by the end of meet and confer  
5 informal negotiations, the party invoking the dispute resolution provision shall  
6 provide notice to the other party that it intends to invoke formal dispute resolution by  
7 filing a motion before the United States District Court for the Central District of  
8 California. The Parties shall jointly apply to the Court for an expedited hearing  
9 schedule on the motion.

10 31. If Coastkeeper initiates a motion or proceeding before the Court relating  
11 to enforcement of the terms and conditions of this Consent Decree, Coastkeeper shall  
12 be entitled to recover fees incurred to enforce the terms of this Consent Decree  
13 consistent with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365  
14 and § 1319.

15 **III. RETENTION OF JURISDICTION AND TERMINATION**

16 32. The Court shall retain jurisdiction over this matter for purposes of  
17 interpreting, modifying or enforcing the terms of this Consent Decree, or as long  
18 thereafter as is necessary for the Court to resolve any motion to enforce this Consent  
19 Decree filed within 60 days after completion of the obligations set forth in the  
20 Consent Decree. This Consent Decree shall terminate on September 30, 2012, if Vi-  
21 Cal Metals' sampling conducted at the Vi-Cal Metals Facilities under this Consent  
22 Decree demonstrates that Vi-Cal Metals has achieved the Numeric Limits set forth in  
23 Table 1 above on or before July 15, 2012. Failure to achieve the Numeric Limits on  
24 or before July 15, 2012 shall result in year-to-year extensions of the Consent Decree  
25 until Vi-Cal Metals achieves the Numeric Limits agreed to under this Consent  
26 Decree at the Vi-Cal Metals Facilities. If either Party has invoked the dispute  
27 resolution process pursuant to Paragraphs 28 through 31 of this Consent Decree, and  
28 the dispute has not been resolved at the time the Consent Decree would otherwise





1 terminate, the Consent Decree shall continue in effect until the dispute is resolved  
2 either by mutual agreement of the Parties or by the Court.

3 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

4 33. In consideration of the above, upon the Effective Date of this Consent  
5 Decree, the Parties hereby fully release, except for claims for the Defendant's failure  
6 to comply with this Consent Decree and as expressly provided below, each other and  
7 their respective successors, assigns, officers, agents, employees, and all persons,  
8 firms and corporations having an interest in them, from any and all alleged CWA  
9 violations claimed in the Complaint, up to and including the Effective Date of this  
10 Consent Decree.

11 34. Nothing in this Consent Decree limits or otherwise affects Plaintiff's  
12 right to address or take any position that it deems necessary or appropriate in any  
13 formal or informal proceeding before the Regional Board, EPA, or any other judicial  
14 or administrative body on any other matter relating to Vi-Cal Metals.

15 **V. MISCELLANEOUS PROVISIONS**

16 35. Neither the Consent Decree nor any payment pursuant to the Consent  
17 Decree shall constitute or be construed as a finding, adjudication, or  
18 acknowledgment of any fact, law, or liability, nor shall it be construed as an  
19 admission of violation of any law, rule, or regulation. Defendant maintains and  
20 reserve all defenses they may have to any alleged violations that may be raised in the  
21 future.

22 36. Force Majeure. Force Majeure includes any act of God, war, fire,  
23 earthquake, windstorm, flood or natural catastrophe; unexpected or unintended  
24 accidents or failures to act not caused by Vi-Cal Metals' or its employee's  
25 negligence; civil disturbance, vandalism, sabotage or terrorism; restraint by court  
26 order or public authority; or action or non-action by, or inability to obtain the  
27 necessary authorizations or approvals from any governmental agency. Force  
28 Majeure shall not include normal inclement weather, economic hardship or inability





1 to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
2 establishing that it could not reasonably have been expected to, and which by  
3 exercise of due diligence has been unable to overcome, the failure of performance.

4 37. Construction. The language in all parts of this Consent Decree shall be  
5 construed according to its plain and ordinary meaning, except as to those terms  
6 defined in the Industrial Permit, the Clean Water Act, or specifically herein.

7 38. Choice of Law. The laws of the United States shall govern this Consent  
8 Decree.

9 39. Severability. In the event that any provision, paragraph, section, or  
10 sentence of this Consent Decree is held by a court to be unenforceable, the validity of  
11 the enforceable provisions shall not be adversely affected.

12 40. Correspondence. All notices required herein or any other  
13 correspondence pertaining to this Consent Decree shall be sent by regular, certified,  
14 or overnight mail as follows:

15 If to Plaintiff:

16 Daniel G. Cooper  
17 Samantha Williams  
18 Lawyers for Clean Water, Inc.  
19 1004 O'Reilly Ave.  
20 San Francisco, CA 94129

21 With copies to:

22 Garry Brown  
23 Orange County Coastkeeper  
24 3151 Airway Ave, Suite F-110  
Costa Mesa, CA 92626

25 If to Defendant:

26 James A. Anton  
27 Walsworth, Franklin, Bevins & McCall, LLP  
28 One City Boulevard West, Fifth Floor  
Orange, California 92868-3677



1 With copies to:

2  
3 Frank Calta  
4 Vi-Cal Metals, Inc.  
5 1400 N. Baxter Street  
6 Anaheim, CA 92806

7 Notifications of communications shall be deemed submitted three days after  
8 the date that they are postmarked and sent by first-class mail or deposited with an  
9 overnight mail/delivery service. Any change of address or addresses shall be  
10 communicated in the manner described above for giving notices. In addition, the  
11 Parties may agree to transmit documents electronically or by facsimile.

12 41. Effect of Consent Decree. Plaintiff does not, by its consent to this  
13 Consent Decree, warrant or aver in any manner that the Defendant's compliance with  
14 this Consent Decree will constitute or result in compliance with any Federal or State  
15 law or regulation. Nothing in this Consent Decree shall be construed to affect or limit  
16 in any way the obligation of the Defendant to comply with all Federal, State, and  
17 local laws and regulations governing any activity required by this Consent Decree.

18 42. Counterparts. This Consent Decree may be executed in any number of  
19 counterparts, all of which together shall constitute one original document. Telecopy  
20 and/or facsimile copies of original signature shall be deemed to be originally  
21 executed counterparts of this Consent Decree.

22 43. Modification of the Consent Decree. This Consent Decree, and any  
23 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
24 written instrument, signed by the Parties.

25 44. Full Settlement. This Consent Decree constitutes a full and final  
26 settlement of this matter.

27 45. Integration Clause. This is an integrated Consent Decree. This Consent  
28 Decree is intended to be a full and complete statement of the terms of the agreement



1 between the Parties and expressly supersedes any and all prior oral or written  
2 agreements covenants, representations, and warranties (express or implied)  
3 concerning the subject matter of this Consent Decree.

4 46. Authority. The undersigned representatives for Plaintiff and Defendants  
5 each certify that he/she is fully authorized by the party whom he/she represents to  
6 enter into the terms and conditions of this Consent Decree.

7 47. The provisions of this Consent Decree apply to and bind the Parties,  
8 including any successors or assigns. The Parties certify that their undersigned  
9 representatives are fully authorized to enter into this Consent Decree, to execute it on  
10 behalf of the Parties, and to legally bind the Parties to its terms.

11 48. The Parties agree to be bound by this Consent Decree and not to contest  
12 its validity in any subsequent proceeding to implement or enforce its terms. By  
13 entering into this Consent Decree, Defendant does not admit liability for any purpose  
14 as to any allegation or matter arising out of this action.

15 49. The term "Effective Date," as used in this Consent Decree, shall mean  
16 the date of expiration of the 45-day review period for the Federal agencies set forth  
17 under paragraph 27 of this Consent Decree.

18 The undersigned representatives for Coastkeeper and Defendant each certify  
19 that he/she is fully authorized by the party whom he/she represents to enter into the  
20 terms and conditions of this Consent Decree and that this Consent Decree binds that  
21 party.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 IN WITNESS WHEREOF, the undersigned have executed this Consent  
2 Decree as of the date first set forth above.

3 LAWYERS FOR CLEAN WATER, INC.

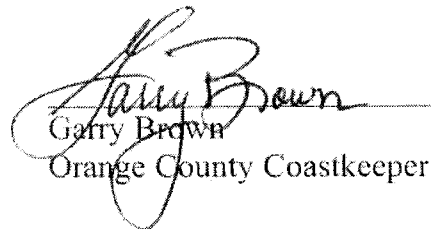
4  
5  
6 Dated: 29 July ~~June~~ 2009



Daniel Cooper  
Martin McCarthy  
Attorneys for Plaintiff  
Orange County Coastkeeper

9  
10 ORANGE COUNTY COASTKEEPER

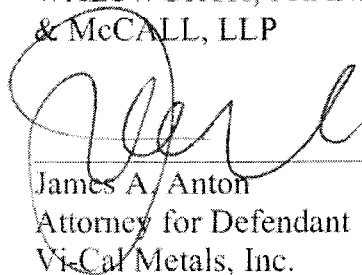
11  
12 Dated: 29 July ~~June~~ 2009



Garry Brown  
Orange County Coastkeeper

15  
16 WALSWORTH, FRANKLIN, BEVINS  
17 & McCALL, LLP

18  
19 Dated: 28 July ~~June~~ 2009



James A. Anton  
Attorney for Defendant  
Vi-Cal Metals, Inc.

22  
23 VI-CAL METALS, INC.

24  
25 Dated: 28 July ~~June~~ 2009

26  
27  
28 by:   
Frank Calta, President